IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH PAUSHA 1928

Crl.MC.No. 3994 of 2003()

S.T CASE NO.828/2003 OF THE JFCM, PAYYANUR)

PETITIONER: ACCUSED NO.3

M/S.HINDUSTAN COCA COLA BEVERAGES PVT.LTD., J.T.ROAD, VADAKARA - 683 101,REPRESENTED BY SHRI.W.WILLIAM MORRIS, GENERAL MANAGER, M/S.HINDUSTAN COCA COLA BEVERAGES PVT.LTD., 33/3381, M.N.R.C.ESTATE, THAIKAVU J.N., VENNALA P.O., COCHIN.

BY ADV. SRI.M.T.SURESHKUMAR
SRI.A.KUMAR

RESPONDENTS: COMPLAINANT AND STATE

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1. THE INSPECTOR OF LEGAL METROLOGY, CIRCLE 2, TALIPARAMBA - 670 341.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI C.M. KAMMAPPU.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

NO REPRESENTATION. THE CRL. M.C. IS DISMISSED FOR NON PROSECUTION.

3-1-2007 SD/- K.R.UDAYABHANU, JUDGE.

ORDER ON CRL.M.P.6146/03

DISMISSED

.3-1-2007. SD/- K.R.UDAYABHANU, JUDGE.

K.R. UDAYABHANU, J.

CRL.M.C.NO. 3994 OF 2003

DATED THIS THE 6th August 2007

ORDER

The petitioner is the third accused in S.T.828/2003 in the file of the Judicial First Class Magistrate Court, Payyannur has sought for getting the proceedings initiated under Section 63 of the Standards of Weights and Measures (Enforcement) Act, 1985 and punishable under Section 63 of the Standards of Weights and Measures Act, 1976 quashed. The prosecution case is that the fruit drink concentrate marketed under the brand name "Sunfill" packed in wholesale packages of 24 sachets each did not contain the mandatory declaration provided under Section 39 of the Act of 1976. It is the contention of the revision petitioner that the proceedings are barred by limitation as the date of detection is 16-8-2003 and the date of complaint is 4-3-2004 and the offence is punishable only by fine and hence under Section 482(2)Cr.P.C. the proceedings should have been initiated within six months. The petitioner has also relied on the fact that

vide Annexure-C reply to the show cause notice it has been specifically explained that the wholesale packages of 24 packets were covered with only a transparent material and that each of the sachets contained the required statutory declaration. The counsel has relied on Rule 9(3) of the Standards of Weights and Measures(Packaged Commodities)Rules, 1977 which provides that where the outside rapper is transparent and that the declaration on the packet is easily readable through such outside rapper the same is sufficient. It is pointed out that there is no explanation in the complaint with respect to the above reply to the show cause notice. What has been mentioned is only that the reply is not satisfactory.

2. I find that the complainant has sought for excluding the period taken for getting the sanction of the controller of the Weights and Measures and has sought for excluding the period under Section 470(3). As pointed out by counsel for the petitioner there is no provision requiring sanction and hence it is contended that the above prayer cannot be permitted as laid down in **Rakesh Kumar Jain v. State, (2000)7 S.C.C.656.**

The Court has held that the period taken for the requirement of authorization cannot be taken as the period contemplated under Section 470(3)Cr.P.C. and that only the period taken for sanction or consent would be covered by Section 470(3)Cr.P.C. What Section 63 of the Weights and Measure(Enforcement) Act, 1985 envisages is only authorization and not consent or sanction. Hence, the above period cannot be excused under Section 470 (3) Cr.P.C.

3. I find that it has to be noted that under Section 473 Cr.P.C. the court is empowered for sufficient reasons to condone the delay. Just the fact Section 470(3) is mentioned in the complaint is no reason to dismiss the complaint if the period can be condoned under Section 473 Cr.P.C. I find that as pointed out by counsel for the revision petitioner before allowing the plea for condonation of delay the accused ought to have been given notice (**Valsan v. State, 2003(2)K.L.T.1050).** In the instant case the accused was not heard on the point. All the same, I find that in view of Annexure-C reply that the alleged infraction of the Rule is saved by Rule 9(3) of the Standards of Weights and

Measures(Packaged Commodities) Rules, 1977 and in view of the fact that there is no explanation in the complaint with respect to the above fact, I find that the proceedings cannot be sustained. The proceedings initiated as S.T.No.828/2003 against the petitioner pending before the Judicial First Class Magistrate Court, Payyannur is herewith quashed. The Crl.M.C.is allowed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.M.C.NO. 3994 OF 2003
order

6-8-2007